

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHARLES E. MCDONALD,

Plaintiff,

v.

NAVIENT SOLUTIONS LLC,
formerly known as Navient Solutions
Inc. and WELTMAN WEINBERG
AND REISS CO. LPA, doing business
as Weltman Weinberg and Resis Co.,

Defendants.

No. 4:16-CV-05141-SMJ

PROTECTIVE ORDER

Upon Stipulation of the parties to this matter, for an order pursuant to Fed. R. Civ. P. 26(c), the Court finds there is potential for a significant number of documents containing the nonpublic personal information of Plaintiff and the confidential and proprietary information of Defendants to be exchanged in discovery in this case, such that document-by-document review of discovery materials will be impracticable if the case is to proceed in an orderly, timely, and efficient manner.

The Court further finds the Parties' interests in protecting the non-public personal information of Plaintiff, as well as confidential and commercially sensitive

1 information of Defendants pertaining to Plaintiff's account(s) from unnecessary
2 disclosure, and the Parties' desire and the benefit to the Court of an orderly and
3 expeditious resolution of this matter on its merits, outweigh any societal interest in
4 disclosure of such materials to non-parties. Thus, after due consideration by the
5 Court and for good cause shown, the Court finds that it is appropriate to expedite
6 the flow of discovery material, promote the prompt resolution of disputes over
7 confidentiality, and to facilitate the preservation of material arguably worthy of
8 protection. Accordingly, it is,

9 **ORDERED and ADJUDGED as follows:**

10 1. "CONFIDENTIAL" Documents, Materials, and Information. This
11 Order shall govern all documents produced or exchanged, all written answers,
12 deposition answers, and other responses to discovery, and all communications of
13 any kind made by Plaintiff, Plaintiff's attorneys, consultants, agents, and
14 representatives; Defendants, their attorneys, consultants, agents, employees, and
15 representatives; and other third parties. "CONFIDENTIAL" materials shall be the
16 documents or information respectively designated under this Order and any notes,
17 work papers, or other documents respectively containing "CONFIDENTIAL"
18 materials derived from such items. Plaintiff, Defendants or any third party may
19 identify any documents or information, including but not limited to discovery
20 materials produced by that party, initial disclosures, documents and things, answers

1 to interrogatories, responses to requests for production, responses to requests for
2 admission, deposition exhibits, and all or portions of deposition or hearing
3 transcripts, as “CONFIDENTIAL” and designate the documents or information as
4 such by affixing thereto a legend of “CONFIDENTIAL” or by designating through
5 another method set forth in this Order or agreed to by the parties.

6 Plaintiff, Defendants or any third party may designate documents or
7 information as “CONFIDENTIAL” to the extent that the party, through counsel,
8 believes “good cause” under Federal Rule of Civil Procedure 26(c) exists to
9 categorize the material as confidential because the material contains or includes: (1)
10 confidential business or technical information; (2) trade secrets; (3) proprietary
11 business methods or practices; (4) any other competitively sensitive confidential
12 information; (5) personal information, including personal financial information
13 about customers or applicants, any party to this lawsuit, or an employee of any party
14 to this lawsuit; (6) information regarding any individual’s banking or lending
15 relationships, including, without limitation, information regarding any individual’s
16 mortgage or credit history and/or consumer information not otherwise available to
17 the public; and (7) any other categories that are later agreed to in writing by the
18 parties or ordered by the Court.

19 2. Designation of “CONFIDENTIAL” Material. Documents shall be
20 designated as “CONFIDENTIAL” by stamping them with the word

1 “CONFIDENTIAL” in a manner which will not interfere with their legibility. This
2 designation shall only be used in a reasonable fashion and upon a good faith
3 determination by counsel that a particular document contains non-public
4 information and falls within one of the categories enumerated in Paragraph 1. This
5 designation shall ordinarily be made before or at the same time as the production or
6 disclosure of the material. Because materials described in Paragraph 1 shall be
7 covered by this Order, there shall be no waiver of confidentiality if such materials
8 are inadvertently produced without being stamped “CONFIDENTIAL.” Materials
9 already produced in discovery in this litigation may be designated as
10 “CONFIDENTIAL” upon written notice (without stamping), within fourteen (14)
11 days of the entry of this Order, from the party asserting the confidentiality
12 designation to all counsel of record to whom such documents have been produced
13 by notifying the other party of the identity of the documents or information to be so
14 designated. Any of the parties to this action can remove at any time its designation
15 of “CONFIDENTIAL” from any of the documents or information it has previously
16 so designated.

17 3. Treatment of “CONFIDENTIAL” Information. Unless otherwise
18 ordered by the Court, “CONFIDENTIAL” material, and any quotes, summaries,
19 charts, or notes made therefrom, and any facts or information contained therein or
20 derived therefrom, shall be held in confidence and used by the parties to whom the

1 documents and information are produced solely for the purpose of this case. The
2 parties agree to take reasonable steps to maintain the confidentiality of the
3 documents, information, and testimony relating thereto. During the pendency of
4 this litigation, "CONFIDENTIAL" material, including all copies thereof, shall be
5 retained solely in the custody of the parties' attorneys and shall not be placed in the
6 possession of or disclosed to any other person, except as set forth in this Order, as
7 otherwise agreed upon by the parties, or upon leave of Court. Each person to whom
8 "CONFIDENTIAL" material is disclosed pursuant to this Order is hereby
9 prohibited from exploiting in any way such documents or information for his, her
10 or its own benefit, or from using such information for any purpose or in any manner
11 not connected with the prosecution or defense of this case.

12 4. "Disclosure." As used herein, "disclosure" or to "disclose" shall mean
13 to divulge, reveal, describe, summarize, paraphrase, quote, transmit, or otherwise
14 communicate "CONFIDENTIAL" material.

15 5. Permissible Disclosure of "CONFIDENTIAL" Material. Except by
16 order of this Court, or otherwise as required by law, material designated as
17 "CONFIDENTIAL" (and any notes or documents that reflect or refer to such
18 documents and information) shall not be disclosed to any person other than:

19 (a) A party hereto;

- 1 (b) Counsel employed by a party, or an employee of such counsel, to whom
2 it is necessary that the materials be shown or the information known for
3 purposes of this case;
- 4 (c) Any employee or agent of a party to whom the “CONFIDENTIAL”
5 materials are shown for the purpose of working directly on or testifying
6 in connection with this litigation at the request of or at the direction of
7 counsel for such party;
- 8 (d) A person retained to assist in this action, such as an investigator,
9 independent accountant, or other technical expert or consultant, who has
10 signed an acknowledgement in the form of Exhibit A hereto, which
11 signed acknowledgment shall be retained by the party who has retained
12 such person;
- 13 (e) This Court (or its employees or agents) pursuant to a court filing in
14 connection with this action;
- 15 (f) Any person(s) designated by the Court in the interest of justice, upon
16 such terms as the Court may deem proper;
- 17 (g) Members of the jury at a public trial of this matter, subject to the
18 requirements of Paragraph 11 below; or
- 19 (h) A person who is deposed or who testifies at the hearing in this matter
20 who has signed an acknowledgement in the form of Exhibit A hereto,

1 which signed acknowledgment shall be retained by the party who has
2 compelled such person to testify at a deposition or trial. If the witness
3 refuses to sign such form, the party compelling such testimony shall
4 immediately notify opposing counsel and permit them seven (7) days to
5 seek redress with the Court.

6 6. Review of Own "CONFIDENTIAL" Materials. The restrictions of
7 this Order shall not apply to parties, and their employees, attorneys, experts or other
8 authorized agents, when reviewing their own "CONFIDENTIAL" materials.

9 7. Deposition Transcripts. Deposition testimony and deposition exhibits
10 containing "CONFIDENTIAL" material shall be covered by this Order. During a
11 deposition taken in this matter, Plaintiff, Defendants or any third party, on the
12 record, may designate as "CONFIDENTIAL" portions of the deposition testimony
13 or deposition exhibits. Alternatively, Plaintiff, Defendants or any third party may,
14 by written notice to opposing counsel and the court reporter not later than fourteen
15 (14) business days after receipt of the final deposition transcript, designate as
16 "CONFIDENTIAL" any portions of the deposition testimony or deposition
17 exhibits. Until expiration of the above fourteen (14) day period, all deposition
18 transcripts will be treated as "CONFIDENTIAL" material unless otherwise agreed
19 to in writing by the parties.
20

1 8. Objections to “CONFIDENTIAL” Designations. To the extent that
2 any party contests a designation under this Order, such party shall object to such
3 designation in writing not later than fourteen (14) business days after receipt of
4 materials designated as “CONFIDENTIAL.” The parties shall first try to resolve
5 the disagreement in good faith on an informal basis, such as the production of
6 redacted copies. If the parties are unable to reach an agreement regarding the
7 designation, then the party objecting to such designation shall file an appropriate
8 motion with the Court for a ruling that the documents or other information shall not
9 be accorded such status and treatment. In the event that such a challenge is made,
10 the party asserting the confidentiality designation shall have the burden of
11 establishing good cause exists under Federal Rule of Civil Procedure 26(c) to
12 maintain the designation. Until this Court enters an order changing the designation
13 of such documents or information, such document or information shall continue to
14 be protected as provided by this Order. Should the Court rule in favor of the party
15 objecting to the confidentiality designation, the party asserting the designation shall
16 produce a copy of the document(s) without the “CONFIDENTIAL” designation.

17 9. Disclosing “CONFIDENTIAL” Material. If any party wishes to
18 disclose any “CONFIDENTIAL” material beyond the terms of Paragraphs 5–6 of
19 this Order, that party shall provide all other parties with reasonable notice in writing
20 of the request to disclose the materials, unless otherwise required by law. If the

1 parties cannot resolve their disagreement with respect to the disclosure of any
2 designated information, then a party may petition the Court for a determination of
3 these issues. In the event that such a challenge is made, the party asserting the
4 confidentiality designation shall have the burden of establishing that the designation
5 is proper. Such “CONFIDENTIAL” material shall remain “CONFIDENTIAL” as
6 stipulated by this Order until the Court rules on the party’s specific petition.

7 10. Pleadings and Other Court Submissions. Each party agrees that when
8 filing with Court any papers (including, without limitation, affidavits, memoranda,
9 interrogatory answers, or depositions) that disclose directly or indirectly any
10 “CONFIDENTIAL” material, such papers shall be filed under seal in accordance
11 with the Court’s local rules and requirements for filing documents under seal.

12 If a party filing a non-dispositive motion seeks to file documents under seal,
13 the filing party must show that good cause exists as defined by Federal Rule of Civil
14 Procedure 26(c). If a party filing a dispositive motion seeks to file documents under
15 seal, the filing party must show “compelling reasons supported by specific factual
16 findings . . . outweigh the general history of access and the public policies favoring
17 disclosure.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)
18 (internal quotations and citations omitted).

19 The parties further recognize the possible need to use documents marked
20 “CONFIDENTIAL” during the trial of this matter. However, the parties agree to

1 take reasonable steps to protect the confidentiality of any trial exhibits so designated
2 to include asking the Court to ensure that any such documents referred to or offered
3 into evidence at trial are filed with the Court under seal.

4 11. Document Retention. After the conclusion of this matter (including
5 the expiration of all appeals), all originals and reproductions of the
6 “CONFIDENTIAL” materials shall be returned to the producing party within thirty
7 (30) days of such conclusion or be destroyed (in which case counsel for the party
8 destroying said documents shall certify in writing to the producing party within
9 thirty (30) days of such conclusion that destruction of the “CONFIDENTIAL”
10 materials has taken place). Insofar as the provisions of this Order restrict the use of
11 the documents produced hereunder, the Order shall continue to be binding
12 throughout and after the conclusion of this case, including all appeals, except as set
13 forth in Paragraph 13.

14 12. Admissibility. Nothing in this Order shall be construed to limit any
15 party from producing or introducing any document into evidence at public hearing.
16 Subject to the Rules of Evidence, “CONFIDENTIAL” materials and other
17 confidential information may be offered in evidence at trial or any court hearing.
18 Any party may move the court for an Order that the evidence be received *in camera*
19 or under other conditions to prevent unnecessary disclosure of any
20 “CONFIDENTIAL” material. The Court will then determine whether the proffered

1 evidence should continue to be treated as “CONFIDENTIAL” and, if so, what
2 protection, if any, may be afforded to such information at the trial or hearing.

3 13. Scope of Discovery. Nothing in this Order shall preclude any party
4 from opposing production of any documents or information, or from seeking further
5 or different relief should future pretrial activities indicate such a need.

6 14. Client Consultation. Nothing in this Order shall bar or otherwise
7 restrict any attorney herein from rendering advice to his or her client with respect
8 to this case or from doing anything necessary to prosecute or defend this case and
9 further the interests of his client, provided, however, that the attorney shall not
10 disclose any material designated for protection hereunder where such disclosure
11 would be contrary to the terms of this Order.

12 15. Discretion of the Court. Nothing in this Order shall apply to, bind, or
13 limit the Court or its employees in the performance of their duties. Notwithstanding
14 any foregoing suggestion to the contrary, the Court shall retain final and complete
15 authority to re-designate any material previously designated as “CONFIDENTIAL”
16 as a public document.

17 16. Notice of Breach. It shall be the obligation of counsel, upon hearing
18 of any breach or threatened breach of this Order by any person, promptly to notify
19 counsel for the opposing and producing parties of such breach or threatened breach.
20 The parties shall make every reasonable effort to mark all discovery containing

1 “CONFIDENTIAL” materials, but the mistaken or inadvertent failure to mark the
2 discovery material, where notice has otherwise been given that it contains
3 “CONFIDENTIAL” materials, shall not exempt it from the provisions of this Order.

4 17. Litigation Use Only. All “CONFIDENTIAL” materials produced in
5 this litigation, whether by a party or nonparty, and whether pursuant to the civil
6 rules of procedure, subpoena, agreement or otherwise, and all information contained
7 therein or derived therefrom, shall be used solely for the preparation and trial of this
8 action (including any appeals and retrials), and may not be used for any other
9 purpose, including business, governmental or commercial, or any other
10 administrative or judicial proceedings or actions.

11 18. Subpoena by Other Court or Agencies. If another court or an
12 administrative agency subpoenas or orders production of “CONFIDENTIAL”
13 materials that a party obtained under the terms of this Order, the party receiving the
14 subpoena shall promptly notify the party or other person who designated the
15 “CONFIDENTIAL” materials of the pendency of such subpoena or order.

16 19. Inadvertent Disclosure Protection. Review of the “CONFIDENTIAL”
17 materials labeled “CONFIDENTIAL” by counsel, experts, or consultants in the
18 litigation shall not waive the “CONFIDENTIAL” designation or any objections to
19 production. “CONFIDENTIAL” materials inadvertently produced by any party or
20 nonparty through discovery in this action without having been designated as

1 “CONFIDENTIAL” shall be subject to the provisions of this Order to the same
2 extent as if the inadvertent disclosure had not occurred so long as there is reasonable
3 notice to the other party of the inadvertent disclosure. If a producing party
4 inadvertently discloses to a receiving party information that is privileged or
5 otherwise immune from discovery, said producing party shall promptly, upon
6 discovery of such disclosure, so advise the receiving party in writing and request
7 that the item or items of information be returned. No party to this action shall
8 thereafter assert that such disclosure waived any privilege or immunity. It is further
9 agreed that the receiving party will return such inadvertently produced item or items
10 of information and all copies thereof within fourteen (14) business days of receiving
11 a written request for the return of such item or items of information from the
12 producing party.

13 20. Non-Parties. Non-parties who are required to produce
14 “CONFIDENTIAL” material in response to a subpoena, and who in good faith
15 believe that such material contains confidential information, may rely on this Order
16 and apply it to their production.

17 21. Responsibility of Attorneys. The attorneys of record are
18 responsible for employing reasonable measures to control, consistent with this
19 Order, the duplication of, access to, and distribution of copies of materials labeled
20 “CONFIDENTIAL.” Parties shall not duplicate any such materials except for

1 working copies and for filing in court under seal. The attorneys of record further
2 are responsible for employing reasonable measures to control, consistent with this
3 Order, the dissemination or revelation of confidential information.

4 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
5 provide copies to all counsel.

6 **DATED** this 22nd day of February 2017.

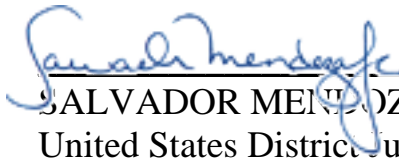
7 
8 SALVADOR MENDOZA, JR.
9 United States District Judge
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Eastern District of
Washington on [date] in the case of *Charles E. McDonald v. Navient Solutions, Inc.,
et al.*, case number 4:16-cv-5141-SMJ. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order. I further agree
to submit to the jurisdiction of the United States District Court for the Eastern
District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of
this action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my Washington agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed Name: _____

4 Signature: _____